

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONNIE FRANKLIN ONLEY,

Plaintiff,

v.

D. DAVIS, et al.,

Defendants.

No. 2:22-cv-01795-WBS-EFB (PC)

ORDER

Plaintiff is a state prisoner proceeding without counsel in this action brought pursuant to 42 U.S.C. § 1983. This action proceeds on plaintiff's original complaint on potentially cognizable due process claims against defendants Davis and Dohoda, a potentially cognizable Fourth Amendment claim against defendant Davis, and a potentially cognizable retaliation claim against defendant John Doe. Plaintiff now seeks leave to amend his complaint in order to identify the "John Doe" defendant as "Mr. M. Harrod" and to add a retaliation claim against defendant Davis. ECF No. 24. Defendants filed a statement of non-opposition to plaintiff's motion to amend. ECF No. 25. However, they request an extension of time to file a responsive pleading. *Id.*

Rule 15(a)(1) provides that "[a] party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under


1 Rule 12(b), (e), or (f), whichever is earlier.” Here, plaintiff moves to amend his complaint before
2 any responsive pleading or motion has been served. Thus, plaintiff may amend his petition “once
3 as a matter of course,” without the court’s leave. Plaintiff’s motion to amend is therefore denied
4 as unnecessary. To properly substitute Mr. M. Harrod for the John Doe defendant and to add a
5 retaliation claim against defendant Davis, however, plaintiff must file an amended complaint that
6 is complete in itself without reference to the original complaint.

7 Because it appears likely that plaintiff will file an amended complaint, defendants’ request
8 for an extension of time to file a responsive pleading is granted. In the event plaintiff files an
9 amended complaint, the court will issue a screening order pursuant to 28 U.S.C. § 1915A.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff’s motion to amend (ECF No. 24) is denied as unnecessary;
- 12 2. To facilitate plaintiff’s filing of an amended complaint that complies with this order,
13 the Clerk of the Court is directed to send to plaintiff a copy of the original complaint,
14 without the exhibits (ECF No. 1 at 1-9); and
- 15 3. Defendants’ request for an extension of time to file a responsive pleading (ECF No.
16 25) is granted. Defendants shall file a responsive pleading within thirty days from the
17 date of any order screening plaintiff’s anticipated amended complaint. If no amended
18 complaint is filed, defendants shall file a responsive pleading within 45 days from the
19 date of this order.

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21 Dated: May 25, 2023.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE